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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services

D3

APR 20 2004

FILE: LIN 03 170 50750 Office: NEBRASKA SERVICE CENTER Date:

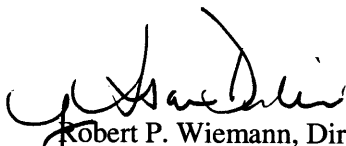
IN RE: Petitioner:  
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(a) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(a)

ON BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner operates a grain farm. It desires to employ the beneficiary as a farm worker for ten months. The director determined that the petitioner had not submitted a temporary agricultural labor certification, Form ETA 750, from the Department of Labor (DOL) when filing the petition. The director also determined that the petitioner had not established that the beneficiary had the requisite experience to perform the duties stipulated on the ETA 750.

On appeal, the petitioner states that the Application for Alien Employment Certification, Form ETA 750, was submitted with the application for two unnamed workers, that was approved, and forwarded to the United States Consulate in Johannesburg, South Africa.

The regulation at 8 C.F.R. § 214.2(h)(5)(i)(A) states in pertinent part:

An H-2A petition must be filed on Form I-129. The petition must be filed with a single valid temporary agricultural labor certification.

The petition was filed on May 1, 2003 without a temporary agricultural labor certification, or notice detailing the reasons why such certification cannot be made. Absent such certification from the Department of Labor or notice detailing the reasons why such certification cannot be made, the petition cannot be approved.

The petitioner states on appeal that he submitted the Application for Alien Employment Certification, Form ETA 750, with a petition that was filed previously for two unnamed workers. The approval notice, dated August 14, 2003, shows that the petition for the two unnamed workers was approved, and notification was sent to the American Consulates in Cape Town, and Johannesburg, South Africa. The petition approval was valid from August 12, 2003 until April 1, 2004. There is no indication in the record that the beneficiary is to be a replacement for one of the unnamed beneficiaries, or if either of these beneficiaries entered the United States based on the aforementioned certification. Consequently, this certification cannot be used for the beneficiary named in this petition. In addition, the beneficiary's stay is limited by the terms of an approved petition. In this instance, the beneficiary would only be allowed to remain in the United States no longer than April 1, 2004.

The director also determined that the beneficiary did not have the requisite experience to qualify for the job offered. On appeal, the petitioner submits a copy of the beneficiary's resume. However, absent the certification listing the job requirements, it cannot be determined whether the beneficiary possesses the requisite experience for the job offered.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.